

434-03/WDM/DPM/GMV  
FREEHILL, HOGAN & MAHAR, LLP  
Attorneys for Petitioner  
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CV 03 0049

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ DEC 01 2003 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

In the Matter of the Complaint of

THE CITY OF NEW YORK, as Owner  
and Operator of the

M/V ANDREW J. BARBERI

03 Civ. \_\_\_\_\_

**COMPLAINT**

Petitioner, The City of New York, (hereinafter "Petitioner"), as owner and operator of the M/V ANDREW J. BARBERI, in accordance with 46 U.S.C. §§181 et seq., by its attorneys, Freehill, Hogan & Mahar, LLP, alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction within the meaning of 28 U.S.C. §1333(1), Rule 9(h) of the Federal Rules of Civil Procedure, and Rule 1<sup>1</sup> of the Supplemental Rules for Certain Admiralty and Maritime Claims, as hereinafter more fully appears.

2. At all relevant times mentioned herein, Petitioner was and remains (a) a municipality under the laws of the State of New York; and (b) the owner and operator of the M/V ANDREW J. BARBERI.

3. The M/V ANDREW J. BARBERI is a self-propelled, motorized passenger ferry vessel of steel construction registered under the laws of the United States, with the following particulars: 310 feet in length, 69.8 feet in breadth and 3,335 gross registered tons. The ANDREW J. BARBERI is currently within this district and within the jurisdiction of this Court.

4. Prior to and all times hereinafter described, Petitioner exercised due diligence to make and maintain the ANDREW J. BARBERI in all respects seaworthy, and the vessel was, in fact, tight, staunch, strong, and fully and properly manned, equipped and supplied, and in all respects fit and proper for the service in which she was engaged at the time of the allision described herein.

5. At approximately 3:00 p.m. on the afternoon of October 15, 2003, the ANDREW J. BARBERI loaded passengers at Whitehall Terminal in Manhattan for the 3:00 p.m. regularly scheduled ferry transit to St. George Terminal in Staten Island.

6. When the ANDREW J. BARBERI left the Whitehall slip, it was manned with an adequate crew, and the vessel was in all respects relevant to this proceeding in a seaworthy condition.

7. The ANDREW J. BARBERI was being piloted by Assistant Captain Richard Smith, who was properly licensed and qualified to navigate and steer the ferry to Staten Island and into the slip at St. George Terminal.

8. As the vessel neared St. George, Staten Island, after an uneventful transit, the lookout in the pilot house requested, and received, Assistant Captain Smith's permission to go below to assume his docking position in the forward part of the vessel.

9. At this point in time, there was no indication, and there had been no prior indication, that anything was wrong with the vessel Assistant Captain Smith.

10. Very shortly thereafter, at approximately 3:20 p.m., the ANDREW J. BARBERI allided with a pier at the St. George ferry terminal located in Staten Island.

11. On information and belief, in the brief period of time between when the lookout left the pilot house and the allision with the pier, Assistant Captain Smith lost control of the ferry due to unforeseeable causes.

12. Petitioner, as owner and operator of the ferry, had no prior warning, and was not aware, that the crew of the ANDREW J. BARBERI would be unable to safely dock the ferry in Staten Island.

13. The operation of the ANDREW J. BARBERI was in all respects in compliance with all legal manning requirements.

14. As a result of the allision, the ANDREW J. BARBERI sustained damages to her hull, and passengers onboard the vessel at the time of the allision suffered injuries and losses, including loss of life.

15. The subject allision and all injury, loss, and damage resulting therefrom were not caused or contributed to by any fault, neglect, want of care, design or unseaworthiness on the part of the M/V ANDREW J. BARBERI, Petitioner, Petitioner's agents, or crew.

16. The subject allision and all injury, loss, destruction, and damage resulting therefrom were caused, done, occasioned, and incurred without the privity or knowledge of Petitioner, or of Petitioner's agents, at or prior to the commencement of, or during, the voyage upon which the ANDREW J. BARBERI was engaged at the time of the allision.

17. The total amount of the claims which have been made, or which may in the future be made, for injury, loss, damages, and other losses and damage arising out of the allision is not presently known; however, Petitioner anticipates and believes that suits and claims will be asserted and prosecuted against it in amounts exceeding the total sum or sums for which Petitioner may be legally responsible or may be required to pay under the applicable statutes governing liability. Attached hereto and made a part hereof as Exhibit "A" is a schedule of all claimants or suitors of whom Petitioner has knowledge as of the time of the filing of this Complaint.

18. There are no demands, unsatisfied claims of liens or liens against the ANDREW J. BARBERI arising out of the voyage hereinafter described, or any claims or suits pending thereon, so far as is presently known to Petitioner, except as set forth herein on Schedule "A".

19. This Complaint is filed within six months from the date Petitioner received first written notice of claim from any claimant following the aforesaid allision and casualty.

20. The value of Petitioner's interest in the said vessel following the casualty is estimated at a maximum of U.S. \$16 million less the cost of repairs estimated to be a minimum of U.S. \$3 million for a total post-casualty value of U.S. \$13 million, as set forth in the affidavit of Rik van Hemmen filed herewith as Exhibits "B". The vessel has not yet been repaired.

21. At the time of the allision, the M/V ANDREW J. BARBERI was operating on her regular passenger ferry route. The passengers onboard were not charged a fee for the voyage, and thus, no freight was being earned by the vessel on this voyage. There was thus no freight pending to Petitioner at the time of the casualty.

22. The amount equal to \$420.00 per ton of the ferry's tonnage is calculated to be \$1,400,700.00, as provided for in 46 U.S.C. § 183(b).

23. As stated herein, Petitioner will submit on a voluntary basis security for the supplemental fund provided for in § 183(b), but does not thereby admit that the ferry was a "seagoing" vessel under 46 U.S.C. §§181 et seq. Petitioner specifically reserves the position that the ferry was not a "seagoing" vessel under 46 U.S.C. §§ 181 et seq.

24. Petitioner herewith deposits with the Court, as security for the benefit of all potential claimants, a Stipulation for Value/of Undertaking in the sum of U.S. \$14,400,700.00 (representing the total value of the vessel, its appurtenances and pending freight following the casualty, plus \$420.00 per gross ton of the ferry), plus interest at the rate of six (6%) percent per annum from the date of said Stipulation, said sum being, upon the evaluation of Mr. Rik van Hemmen, of Martin, Ottoway, van Hemmen & Dolan, Inc., not less than the value of Petitioner's interest in the M/V ANDREW J. BARBERI and her pending freight at the end of the aforesaid voyage plus an amount equal to \$420 per ton of the ferry's tonnage.

25. Petitioner herewith deposits with the Court, as security for costs, pursuant to Supplemental Admiralty Rule F(1), a Stipulation for Costs in the amount of \$250.00.

26. Petitioner, as owner and operator of the M/V ANDREW J. BARBERI, specifically claims that it be found not liable for any and all injury, loss, destruction, and damage caused by, or resulting from, the aforesaid allision, or done, occasioned, or incurred on the aforesaid voyage on which the said allision occurred, and with respect to any and all claims therefor or relating thereto, Petitioner alleges that it has valid defenses on the facts and on the law. Alternatively, Petitioner, without admitting but denying liability, expressly claims the benefit of limitation of liability as provided for in 46 U.S.C. §§ 183-186 and 188, and the various statutes supplemental thereto and amendatory thereof, and to that end, Petitioner herewith has deposited with the Court, as sufficient security for the benefit of claimants, the aforesaid Stipulation for Value/of Undertaking in the sum of U.S. \$14,400,700.00, plus interest, as provided by the aforesaid statutes, by the Federal Rules of Civil Procedure, including Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, and by the Rules and practices of this Court.

27. If it later appears that Petitioner is, or may be, liable, and the amount or value of Petitioner's interest in the M/V ANDREW J. BARBERI and her pending freight, plus the amount equal to \$420 per gross ton of the ferry's tonnage as aforesaid, are not sufficient to pay all losses in full, Petitioner requests that claimants shall then share pro rata in the aforesaid sum, saving to claimants any rights of priority they may have as ordered by the Court as provided by the aforesaid statutes, by the Federal Rules of Civil Procedure, including the Supplemental Rules for Certain Admiralty and Maritime Claims and Rule F thereof, and by the Rules and practices of this Court.

28. All and singular the premises are true, correct, and within the jurisdiction of the United States and of this Court as an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

29. Venue is proper in this Court because, as reflected in Exhibit A, a suit has been filed against Petitioner related to the matters herein, in this district.

**WHEREFORE**, Petitioner respectfully prays that:

1. This Court issue an order approving the above described Stipulation for Value, deposited with the Court by Petitioner, as sufficient security for the amount or value of Petitioner's post-allision interest in the M/V ANDREW J. BARBERI and her pending freight plus the amount equal to \$420.00 per ton of the ferry's gross tonnage;
2. This Court approve Petitioner's Stipulation for Costs of \$250.00 as sufficient security for costs;
3. This Court issue notice to all persons asserting claims with respect to which the Complaint seeks limitation notifying such persons to file their respective claims with the Clerk of this Court and to serve on the attorneys for Petitioner a copy thereof on or before a date to be named in the notice, and that if any such claimants desire to contest Petitioner's claim that it is not liable, or its right to limitation of liability, each such claimant shall also file and serve on the attorneys for Petitioner an Answer to the Complaint on or before the said date, unless the claim has included an Answer, so designated;



4. This Court enjoin the further prosecution of any and all actions, suits, or proceedings already commenced as well as the commencement or prosecution of any and all future actions, suits, or proceedings, of any nature or description whatsoever in any jurisdiction, against Petitioner; the M/V ANDREW J. BARBERI; the agents, representatives, employees, or insurers of Petitioner; and/or against any property of Petitioner except in this action, to recover damages for or with respect to injury, loss, and damage caused by or resulting from the aforesaid casualty, or with respect to injury, loss, and damage caused, done, occasioned, or incurred on the voyage described in the Complaint;
5. This Court adjudge that Petitioner is not liable with respect to any and all injury, loss, damage, or destruction caused by or resulting from the aforesaid casualty or with respect to injury, loss, and damage done, occasioned, or incurred on the said voyage, and that, in the alternative, if Petitioner shall be adjudged liable, that such liability be limited to the amount or value of Petitioner's interest in the M/V ANDREW J. BARBERI and her pending freight as aforesaid, at the end of the said voyage, plus the amount equal to \$420.00 per ton, and that Petitioner be discharged therefrom upon the surrender of such interest, and that the money surrendered, paid or secured to be paid, as aforesaid, be divided pro rata according to the hereinabove mentioned statutes among such claimants in accordance with the provisions of the order hereinabove prayed for, saving to all persons and priorities to which they may be legally entitled, and that a decree may be entered, discharging Petitioner and the M/V ANDREW J. BARBERI from all further liability;



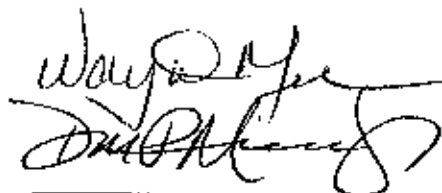
6. Petitioner may have such other, further, or different relief as may be just.

Dated: New York, New York  
December 1, 2003

Respectfully submitted,

FREEHILL, HOGAN & MAHAR, LLP

By: \_\_\_\_\_



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Don P. Murnane, Jr. (DM 1335)  
Gina M. Venezia (GV4369)  
**Attorneys for Petitioner**  
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New York, New York 10005  
(212) 425-1900



**EXHIBIT A TO COMPLAINT:  
SCHEDULE OF CLAIMS**

**List of Claimants Who Have Filed Suit**

The following is a list of all claimants of whom Petitioner has knowledge as of the time of the filing of the Complaint herein who have filed a suit in connection with the matters set forth in the Complaint.

- (1) ***Daniel Ennis v. The City of New York***  
Civil Action No. 03-8993 (LTS)  
Pending in U.S. District Court for the S.D.N.Y.  
Plaintiff's Attorneys:  
Friedman & James, LLP  
132 Nassau St.  
New York, NY 10038  
(212) 233-9385  
Amount Claimed in Complaint: \$3,000,000.00
  
- (2) ***Ivette Jones, individually and in her own right and as a representative of the class herein defined vs. Richard J. Smith, Michael Gansas, Iris Weinshall, individually and as Commissioner of the New York City Department of Transportation, The New York City Department of Transportation and the City of New York, Saint George Terminal, John Does 1-150, and ABC Corps.: 1-50, and the M/V ANDREW J. BARBERI, in rem.***  
  
Civil Action No. 03-5482 (ERK) (VVP)  
Pending in U.S. District Court for the E.D.N.Y.  
Plaintiff's Attorneys:  
Edward R. Petkevis, P.C.  
1380 Hornberger Avenue  
Rochling, N.J. 08554  
(609) 499-4300  
Amount Claimed in Complaint: \$100,000,000.00 in compensatory damages and \$100,000,000.00 in punitive damages.

**List of Claimants Who Have Filed a Notice of Claim**

The following is a list of all claimants or suitors of whom Petitioner has knowledge as of the time of the filing of the Complaint herein who have filed suits in connection with the matters set forth in the Complaint.

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(1)	Izet Adzenovic	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(2)	Shiram & Aruna Agni	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(3)	Santos Alvarado	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(4)	Lanez Atherton	Jaroslavec & Jaros 150 William Street New York, NY 10038 (212) 227-2780	\$ 2,000,000
(5)	Henry & Carline Bennudritti	Salenger & Sack 233 Broadway, Suite 950M New York, NY 10279 (212) 267-1950	\$ 5,500,000
(6)	Audrey Biasc	Law Offices of John G. O'Leary 25 Manor Road Staten Island, NY 10310 N/A	\$ 150,000,000
(7)	Janet Borda	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(8)	Debra & William Castro	Dankner & Milstein, P.C. 41 E. 57th Street, 36th Floor New York, NY 10022 (212) 751-8000	\$ 120,000,000
(9)	Daniel Dechirico	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(10)	Laura Diaz	Lazzaro & Gregory 360 Court Street New York, NY 11231 (718) 488-1900	\$ 10,000,000
(11)	Alan Eisenstein	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(12)	Rosario Fanello	Duane C. Felton, Esq. 805 Castleton Avenue Staten Island, NY 10310 (718) 273-9600	No Amount Claimed
(13)	John Frizziola	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(14)	Nadasha Green	Morton Buckvar, Esq. 299 Broadway, Suite 1107 New York, NY 10007 (212) 962-2173	\$ 792,327
(15)	Yolanda Harris	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(16)	Nicole Hastaba	Duane C. Felton, Esq. 805 Castleton Avenue Staten Island, NY 10310 (718) 273-9600	No Amount Claimed \$
(17)	Radek Hazuka	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(18)	Cheyenne Holmes	Duane C. Felton, Esq. 805 Castleton Avenue Staten Island, NY 10310 (718) 273-9600	No Amount Claimed \$
(19)	Edwin John	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(20)	Lloyd & Jocelyn Joseph	Rubenstein & Ryncecki 16 Court Street Brooklyn, NY 11241 (718) 522-1020	\$ 55,000,000

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(21)	Eugene & Roberta Kcohane	Minchew, Santner & Brenner 1741 Victory Blvd. Staten Island, NY 10314 (728) 727-7700	\$ 5,100,000
(22)	Joseph LaBarbara	Ameduri Galante & Friscia 471 Bement Avenue Staten Island, NY 10310 (718) 442-9000	\$ 25,000,000
(23)	Nicolas LaPierre	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(24)	Stanley Mason	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(25)	Jessica McDonald	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(26)	Steven Parker	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(27)	Charles Pederson	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(28)	Nadine Russell	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(29)	Joseph Scarola	Duane C. Felton, Esq. 805 Castleton Avenue Staten Island, NY 10310 (718) 273-9600	No Amount Claimed \$
(30)	Richard Scheblein	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(31)	Aaron Sullivan	Chelli & Bush 149 New Dorp Lane Staten Island, NY 10306	\$

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(32)	Christine Santoro Estate of John Valinsky	Gary M. Mionis 265 Sunrise Hwy., Suite 30 Rockville Centre, NY 11570 (516) 678-9797	\$
(33)	Dinah Washington	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$ 10,000,000
(34)	Jalil Washington	Bosco, Bisignano & Mascolo 857 Forest Avenue Staten Island, NY 10310 (718) 273-4046	\$
(35)	Erica Weeks	Borrell & Riso 1500 Hylan Blvd. Staten Island, NY 10305 (718) 667-8600	\$ 20,000,000
(36)	Jason & Bridget Crushshon	Reid B. Wissner 325 Broadway New York, N.Y. 10007 (212) 406-9288	\$ 11,000,000
(37)	Alejandro Rosa	Andrew F. Plasse 352 7 <sup>th</sup> Avenue Suite 408 New York, N.Y. 10001 (212) 695-5811	\$ 10,000,000
(38)	Regina Valisia Alexander	Wilén & Baker 450 Seventh Avenue New York, New York 10123 (212) 564-0300	\$ 2,200,000
(39)	Michele Balbi	Minches Santner & Brenner 1741 Victory Boulevard Staten Island, N.Y. 10314 (718) 727-7700	\$ 5,000,000
(40)	Erin Baydal	Sullivan Papain Block McGrath & Cnnavo 120 Broadway New York, N.Y. 10271 (212) 732-9000	\$ 1,000,000



	Claimant's Name	Claimant's Attorney's Name, Address & Telephone Number	Amount Claimed in Notice
(41)	Catherine Bright	Minches Santner & Brenner 1741 Victory Boulevard Staten Island, N.Y. 10314 (718) 727-7700	\$ 5,000,000
(42)	Paul Capurso	Chelli & Bush 149 New Dorp Lane Staten Island, N.Y. 10306 (718) 987-8444	No Amount Claimed
(43)	Francisco Corchado	Dankner Milstein 41 East 57 <sup>th</sup> Street New York, New York 1002 (212) 751-8000	\$ 10,000,000
(44)	Amedeo Diganci	Chelli & Bush 149 New Dorp Lane Staten Island, New York 10306 (718) 987-8444	No Amount Claimed
(45)	Paul, Michael & Audrey-jo Esposito	The Cochran Firm 233 Broadway, 5 <sup>th</sup> floor New York, New York 10279 (212) 553-9000	\$ 300,000,000
(46)	Tina & Wayne Evans	Weisman & Calderon 6 Gramatan Avenue Mt. Vernon, New York 10550 (914) 668-8900	\$ 275,000,000
(47)	Richard Galati	Sullivan Papain Block McGrath & Cnnavo 120 Broadway New York, New York 10271 (212) 732-9000	\$ 1,000,000
(48)	David Gayle	Reid B. Wissner 325 Broadway New York, N.Y. 10007 (212) 406-9288	\$ 2,000,000

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(49)	Trinyia Graham/ Ideshia Williams	Minchew Santner & Brenner 1741 Victory Boulevard Staten Island, N.Y. 10314 (718) 727-7700	\$ 1,100,000
(50)	Michael Grynberg	Bruce S. Reznick 958 East 81 <sup>st</sup> Street Brooklyn, New York 11236 (718) 241-6460	\$ 10,000,000
(51)	Kevin Dwayne Hall	Tolmago Peskin Harris Falick 20 Vesey Street New York, New York 10007 (212) 964-1390	\$ 1,000,000
(52)	Brian Healy	Christopher J. Benes 2119 Skipper Court Bellmore, New York 11710 (516) 317-8390	\$ 25,000,000
(53)	Estate of John P. Healy	Christopher J. Benes 2119 Skipper Court Bellmore, New York 11710 (516) 317-8390	\$ 25,000,000
(54)	John Healy, Jr.	Christopher J. Benes 2119 Skipper Court Bellmore, New York 11710 (516) 317-8390	\$ 25,000,000
(55)	Kathleen Healy	Christopher J. Benes 2119 Skipper Court Bellmore, New York 11710 (516) 317-8390	\$ 25,000,000
(56)	Kelly Healy	Christopher J. Benes 2119 Skipper Court Bellmore, New York 11710 (516) 317-8390	\$ 25,000,000

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(57)	Mary Healy	Christopher J. Banes 2119 Skipper Court Bellmore, New York 11710 (516) 317-8390	\$ 25,000,000
(58)	Deshawn Johnson	Corpina Piergrossi Overzat & Klar 2344 Eastchester Road Bronx, New York 10469 (718) 515-6000	\$ 10,000,000
(59)	Claudia Lopez	Bosco Bisignano & Mascolo 857 Forest Avenue Staten Island, N.Y. 10310 (718) 723-4046	\$ 10,000,000
(60)	Alfonso Manzo	Chelli & Bush 149 New Dorp Lane Staten Island, New York 10306 (718) 987-8444	No Amount Claimed
(61)	Thomas McGuire	Taub & Marder 450 7 <sup>th</sup> Avenue New York, N.Y. 10123 (212) 967-1122	\$ 2,000,000
(62)	Emiliano Navarro	Chelli & Bush 149 New Dorp Lane Staten Island, N.Y. 10306 (718) 987-8444	No Amount Claimed
(63)	Francisca Navarro	Chelli & Bush 149 New Dorp Lane Staten Island, N.Y. 10306 (718) 987-8444	No Amount Claimed
(64)	Refika Sebnem Ozmen	383 Victory Boulevard Staten Island, N.Y. 10301 (718)	\$ 1,000,000

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(65)	Guillermo Paguay	Taub & Marder 450 7 <sup>th</sup> Avenue New York, New York 10123 (212) 967-1122	\$ 20,000,000
(66)	John & Carol Pappalardo	Taub & Marder 450 7 <sup>th</sup> Avenue New York, N.Y. 10123 (212) 967-1122	\$ 2,200,000
(67)	Gustav & Gail Plaginos	John M. O'Dowd, Jr. 1164 Victory Boulevard Staten Island, N.Y. 10301 (718) 273-2500	\$ 5,100,000
(68)	Zelda Riddick	Reid B. Wissner 325 Broadway New York, N.Y. 10007 (212) 406-9288	\$ 2,000,000
(69)	Estate of Louis A. Robinson	The Cochran Firm 233 Broadway, 5 <sup>th</sup> floor New York, New York 10279 (212) 553-9000	\$ 250,000,000
(70)	Matthew Ruberto	Chelli & Bush 149 New Dorp Lane Staten Island, N.Y. 10306 (718) 987-8444	No Amount Claimed
(71)	Richard Schettini	Wilen & Baker 450 7 <sup>th</sup> Avenue New York, New York 10123 (212) 564-0300	\$ 2,000,000
(72)	Bob Seesman	Wilen & Baker 450 7 <sup>th</sup> Avenue New York, New York 10123 (212) 564-0300	\$ 2,000,000

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(73)	Phyllis & Joseph Stivala- Eugenio	Bosco Bisignano & Mascolo 857 Forest Avenue Staten Island, New York 10310 (718) 273-4046	\$ 10,000,000
(74)	Jasmin Tania	Taub & Marder 450 7 <sup>th</sup> Avenue New York, New York 10123 (212) 967-1122	\$ 2,000,000
(75)	Tina Thomas	Taub & Marder 450 7 <sup>th</sup> Avenue New York, New York 10123 (212) 967-1122	\$ 2,200,000
(76)	John Scott & Joan Thompson	Cappiello Hoffman & Katz 360 W. 31 <sup>st</sup> Street New York, N.Y. 10001 (212) 465-8840	\$ 2,500,000
(77)	Harold Vargas	Jeffrey Lessoff 45 White Street New York, New York 10013 (212) 219-9257	\$ 5,000,000
(78)	Joseph Vella	Amabile & Erman P.C. 1000 South Avenue Staten Island, N.Y. 10314 (718) 370-7030	No Amount Claimed
(79)	Gordon & Nancy Waite	Bosco Bisignano & Mascolo 857 Forest Avenue Staten Island, N.Y. 10310 (718) 273-4046	\$ 10,000,000
(80)	Philip Allen Wall, Jr.	Borchert Gnovesi LaSpina & Landicino 19-02 Whitestone Expressway New York, New York 11357 (718) 767-3333	\$ 250,000,000

	<b>Claimant's Name</b>	<b>Claimant's Attorney's Name, Address &amp; Telephone Number</b>	<b>Amount Claimed in Notice</b>
(81)	Aisha Williams	The Cochran Firm 233 Broadway, 5 <sup>th</sup> floor New York, New York 10279 (212) 553-9000	\$ 5,000,000





434-03/WDM/MM/TR  
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New York, New York 10005  
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Wayne D. Meehan (WM 9102)  
Don P. Murnane, Jr. (DM 3639)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

In the Matter of the Complaint of

THE CITY OF NEW YORK, as Owner  
and Operator of the

M/V ANDREW J. BARBERI

03 Civ. \_\_\_\_\_

**AFFIDAVIT OF RIK VAN  
HEMMEN, P.E. REGARDING  
PETITIONER'S INTEREST IN  
VALUE OF VESSEL**

STATE OF NEW JERSEY

COUNTY OF MONMOUTH

I, RIK VAN HEMMEN, being duly sworn, deposes and says:

1. I am a partner with the firm Martin, Ottaway, van Hemmen & Dolan, Inc., which is engaged in the business of appraising the value of commercial vessels and other ships for financial, repair, sale and purchase, and insurance purposes. I am a ship surveyor with extensive experience in the surveying of hull damage to vessels.

2. In accordance with instructions received from the owners and the attorneys of and on behalf of the M/V ANDREW J. BARBERI, I have conducted an evaluation of the value of the said vessel, a U.S. passenger ferry, as of October 15, 2003.

3. Based on our investigation, it is my opinion that if the vessel had been offered for sale in the market, the price a buyer would have been willing to pay is difficult to determine due to the vessel's very limited market and highly specialized design.

4. I have also determined the value of the vessel as of October 15, 2003, based upon the construction cost to build the vessel less depreciation, which is in the range of \$13 million to \$16 million.

5. It can be fairly stated that the vessel's purchase and sale market value is substantially less than its construction cost less depreciation value.

6. I have also inspected and observed the damage incurred by the vessel due to the events of October 15, 2003, and based upon the limited information currently available, I estimate the costs to repair the vessel to be approximately \$3,000,000 to \$5,000,000.

7. I attach hereto a copy of a Certificate certifying my opinion as to the value of the vessel.

I declare, pursuant to 28 U.S.C. 1746(2), under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

  
RIK VAN HEMMEN, P.E.

Sworn to and subscribed before me  
on the 6<sup>th</sup> day of November, 2003.

  
NOTARY PUBLIC

NOTARY PUBLIC  
STATE OF NEW JERSEY  
MARIANNE HERRICK  
MY APPOINTMENT EXPIRES FEB. 4, 2008

**MARTIN, OTTAWAY, VAN HEMMEN & DOLAN, INC.**  
MARINE CONSULTANTS, ENGINEERS, SURVEYORS, NAVAL ARCHITECTS AND APPRAISERS

**NEW JERSEY**

172 MONMOUTH STREET  
RED BANK, NEW JERSEY 07701

TELEPHONE: (732) 224-1133

FACSIMILE: (732) 224-8631

*November 5, 2003*

## **CERTIFICATE OF VALUATION**

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*I, the undersigned, having been requested  
by Freehill, Hogan & Mahar, Attorneys at Law, New York,  
New York, to value the Staten Island Ferry "ANDREW J.  
BARBERI", Gross Tons 3,335, Built May 1981, Official  
No. 629314, in sound condition as of October 15, 2003,  
hereby certify that having availed myself of the best  
possible information regarding this vessel, I value her on a  
"Construction Cost Depreciation" basis in the region of  
U.S. DOLLARS THIRTEEN MILLION TO SIXTEEN  
MILLION.....\$13,000,000.00 to \$16,000,000.00.*

MARTIN, OTTAWAY, VAN HEMMEN & DOLAN, INC.

BY

*[Signature]*  
Rick van Hemmen

APPRAISER

MARTIN, OTTAWAY, VAN HEMMEN & DOLAN, INC.  
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MARTIN, OTTAWAY, VAN HEMMEN & DOLAN, INC.

PER

Rik van Hemmen

APPRAISER